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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
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11 Tariq Ahmad,) CV 96-1385 RSWL (RNBx)
12)
13 Plaintiff,) **ORDER Re:** Defendant
14 v.) Darryl Speach's Ex Parte
15) Application to Set Aside
16 Weber Nameplate, Marc) Default Judgment [109]
17 Wilder, Coastline Metal)
18 Finishing, Phil Viljoen,)
19 Robert Moore, Daryl Speach,)
20 and Does 1 through 100,)
21 inclusive,)
22 Defendants.)
23)
24)
25)
26)
27)
28)

20 Currently before the Court is Defendant Darryl
21 Speach's ("Defendant") Ex Parte Application to Set
22 Aside Default Judgment (Fed. R. Civ. Pro. 60(b)(4))
23 [109]. The Court, having reviewed all papers submitted
24 pertaining to this Motion, **NOW FINDS AND RULES AS**
25 **FOLLOWS:**

26 The Court hereby **GRANTS** Defendant's Ex Parte
27 Application to Set Aside Default Judgment. Defendant
28 requests that the Court set aside the default judgment

1 entered against him on September 29, 1999 [107].
2 Defendant alleges that he was never properly served
3 with the Complaint, and thus, the default judgment
4 against him is void. Defendant provides a copy of the
5 proof of service that Plaintiff Tariq Ahmad
6 ("Plaintiff") filed with the Court on August 14, 1998.
7 Lincoln Decl. Ex. 11. The proof of service shows that
8 Defendant was served by substituted service by leaving
9 copies of the summons and complaint with "Kim Cosslett,
10 co-occupant" at 3691 Urbana, Ontario, CA 91761.
11 Defendant contends that he never resided at this
12 address and has never even met Kim Cosslett. Speech
13 Decl. ¶¶ 5-6.

14 If a party is not properly served, any judgment
15 against that party is void. Mason v. Genisco Tech.
16 Corp., 960 F.2d 849, 851 (9th Cir. 1992). However, "a
17 signed return of service constitutes prima facie
18 evidence of valid service which can be overcome only by
19 strong and convincing evidence." S.E.C. v. Internet
20 Solutions for Bus. Inc., 509 F.3d 1161, 1163 (9th Cir.
21 2007). Here, a signed return of service has been
22 provided showing that Defendant was served by
23 substituted service at the address listed above. Thus,
24 Defendant must prove by "strong and convincing
25 evidence" that he was not validly served.

26 Defendant declares that he has never resided at
27 3691 Urbana, Ontario, and asserts that, in fact, he
28 resided at 8057 East Santo Court, Anaheim Hills, CA

1 92808 at all relevant times. Speech Decl. ¶ 3. In
2 support of this contention, Defendant provides the
3 Court with numerous documents evidencing his residence
4 in Anaheim Hills, California during the approximate
5 time period when he was allegedly served. Lincoln
6 Decl. Exs. 7-8; Speech Decl. Exs. 1-3. Persuasively,
7 Defendant provides a record evidencing his purchase of
8 the Anaheim Hills residence in 1995 and his sale of the
9 residence in 2000. Lincoln Decl. Exs. 7-8. Defendant
10 also provides evidence that the Anaheim Hills address
11 was his primary residence in 1998 and 1999. Defendant
12 provides a parking citation and personal check, both
13 listing the Anaheim Hills address, which were dated in
14 1998 and 1999, respectively. Speech Decl. Ex. 2.
15 Further, Defendant provides a contract for the purchase
16 of an automobile dated July 31, 1999, which lists
17 Defendant's address as the Anaheim Hills residence.
18 Speech Decl. Ex. 3.

19 Considering the evidence presented by Defendant,
20 the Court finds that Defendant has met his burden to
21 prove by "strong and convincing" evidence that he was
22 not validly served in this Action. Plaintiff has
23 failed to address the validity of service and has not
24 rebutted Defendant's showing of invalid service. In
25 fact, Plaintiff has not provided any evidence tying
26 Defendant to the Ontario address, where Defendant was
27 allegedly served. Accordingly, the Court finds that
28 the default judgment entered against Defendant is void.

1 Mason, 960 F.2d at 851.

2 The Court must now determine whether Defendant's
3 Motion was timely filed. Federal Rule of Civil
4 Procedure 60(b)(4) provides for the setting aside of
5 void judgments. Fed. R. Civ. P. 60(b)(4). Rule
6 60(c)(1) provides the timing in which a motion to set
7 aside judgments must be made. It states generally that
8 a Rule 60(b) motion must be made within a reasonable
9 time. Fed. R. Civ. P. 60(c)(1). However, courts have
10 held repeatedly that there is no time limit to set
11 aside a void judgment pursuant to Rule 60(b)(4).

12 Meadows v. Dominican Republic, 817 F.2d 517, 521 (9th
13 Cir. 1987); Cent. Vt. Pub. Serv. Corp. v. Herbert, 341
14 F.3d 186, 189 (2d Cir. 2003) ("[I]t has been oft-stated
15 that, for all intents and purposes, a motion to vacate
16 a default judgment as void 'may be brought at any
17 time.'"). Therefore, the Court finds that Defendant's
18 present Ex Parte Application to Set Aside Default
19 Judgment is not untimely.

20 Pursuant to the above analysis, the Court hereby
21 **GRANTS** Defendant's Ex Parte Application to Set Aside
22 Default Judgment. The Court finds that the default
23 judgment entered against Defendant on September 29,
24 1999 is void, and therefore, any lien against

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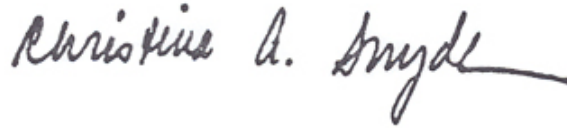
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1 Defendant's property pursuant to said default judgment
2 is invalid.

3 **IT IS SO ORDERED.**

4 DATED: August 15, 2012

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7 **HONORABLE CHRISTINA A. SNYDER**
8 U.S. District Court Judge
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